

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 280

(By Senators Cole (Mr. President), Boley, Ferns, Mullins, Nohe,
Sypolt, Prezioso, Facemire, D. Hall, Williams, Kessler, Palumbo
and Beach)

[Originating in the Committee on the Judiciary;
reported January 23, 2015.]

A BILL to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing transfer of well work permits upon prior written approval of the Secretary of the Department of Environmental Protection; providing for forms prescribed by the secretary; requiring transferee to give notice of transfer; requiring transferee to update their emergency point of contact; and providing for permit transfer fee.

Be it enacted by the Legislature of West Virginia:

That §22-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL
ACT.**

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any
3 disturbance of land, for a horizontal well without first
4 securing from the secretary a well work permit pursuant to
5 this article.

6 (b) Every permit application filed under this section shall
7 be on a form as may be prescribed by the secretary, shall be
8 verified and shall contain the following information:

9 (1) The names and addresses of: (i) The well operator;
10 (ii) the agent required to be designated under subsection (h)

11 of this section; and (iii) every person whom the applicant
12 shall notify under any section of this article, together with a
13 certification and evidence that a copy of the application and
14 all other required documentation has been delivered to all
15 such persons;

16 (2) The names and addresses of every coal operator
17 operating coal seams under the tract of land on which the
18 well is or may be located, and the coal seam owner of record
19 and lessee of record required to be given notice by
20 subdivision (6), subsection (a), section five of this article, if
21 any, if ~~said~~ the owner or lessee is not yet operating ~~said~~ the
22 coal seams;

23 (3) The number of the well or ~~such~~ other identification ~~as~~
24 the secretary may require;

25 (4) The well work for which a permit is requested;

26 (5) The approximate total depth to which the well is to be
27 drilled or deepened, or the actual depth if the well has been
28 drilled; the proposed angle and direction of the well; the

29 actual depth or the approximate depth at which the well to be
30 drilled deviates from vertical, the angle and direction of the
31 nonvertical well bore until the well reaches its total target
32 depth or its actual final depth; and the length and direction
33 of any actual or proposed horizontal lateral or well bore;

34 (6) Each formation in which the well will be completed
35 if applicable;

36 (7) A description of any means used to stimulate the
37 well;

38 (8) If the proposed well work will require casing or
39 tubing to be set, the entire casing program for the well,
40 including the size of each string of pipe, the starting point
41 and depth to which each string is to be set and the extent to
42 which each such string is to be cemented;

43 (9) If the proposed well work is to convert an existing
44 well, all information required by this section, all formations
45 from which production is anticipated and any plans to plug
46 any portion of the well;

47 (10) If the proposed well work is to plug or replug the
48 well, all information necessary to demonstrate compliance
49 with the legislative rules promulgated by the secretary in
50 accordance with section thirteen of this article;

51 (11) If the proposed well work is to stimulate a horizontal
52 well, all information necessary to demonstrate compliance
53 with the requirements of subdivision (7), subsection (a),
54 section five of this article;

55 (12) The erosion and sediment control plan required
56 under subsection (c) of this section for applications for
57 permits to drill;

58 (13) A well site safety plan to address proper safety
59 measures to be employed for the protection of persons on the
60 site as well as the general public. The plan shall encompass
61 all aspects of the operation, including the actual well work
62 for which the permit was obtained, completion activities and
63 production activities, and shall provide an emergency point
64 of contact for the well operator. The well operator shall

65 provide a copy of the well site safety plan to the local
66 emergency planning committee established pursuant to section
67 seven, article five-a, chapter fifteen of this code for the
68 emergency planning district in which the well work will occur
69 at least seven days before commencement of well work or site
70 preparation work that involves any disturbance of land;

71 (14) A certification from the operator that: (i) It has
72 provided the owners of the surface described in subdivisions
73 (1), (2) and (4), subsection (b), section ten of this article, the
74 information required by subsections (b) and (c), section
75 sixteen of this article; (ii) that the requirement was deemed
76 satisfied as a result of giving the surface owner notice of
77 entry to survey pursuant to subsection (a), section ten of this
78 article; or (iii) the notice requirements of subsection (b),
79 section sixteen of this article were waived in writing by the
80 surface owner; and

81 (15) Any other relevant information which the secretary
82 may reasonably require.

83 (c) (1) An erosion and sediment control plan shall
84 accompany each application for a well work permit under
85 this article. The plan shall contain methods of stabilization
86 and drainage, including a map of the project area indicating
87 the amount of acreage disturbed. The erosion and sediment
88 control plan shall meet the minimum requirements of the
89 West Virginia Erosion and Sediment Control Manual as
90 adopted and from time to time amended by the department.
91 The erosion and sediment control plan shall become part of
92 the terms and conditions of any well work permit that is
93 issued pursuant to this article and the provisions of the plan
94 shall be carried out where applicable in the operation. The
95 erosion and sediment control plan shall set out the proposed
96 method of reclamation which shall comply with the
97 requirements of section fourteen of this article.

98 (2) For well sites that disturb three acres or more of
99 surface, excluding pipelines, gathering lines and roads, the
100 erosion and sediment control plan submitted in accordance

101 with this section shall be certified by a registered professional
102 engineer.

103 (d) For well sites that disturb three acres or more of
104 surface, excluding pipelines, gathering lines and roads, the
105 operator shall submit a site construction plan that shall be
106 certified by a registered professional engineer and contains
107 information that the secretary may require by rule.

108 (e) In addition to the other requirements of this section, if
109 the drilling, fracturing or stimulating of the horizontal well
110 requires the use of water obtained by withdrawals from waters
111 of this state in amounts that exceed two hundred ten thousand
112 gallons during any thirty-day period, the application for a well
113 work permit shall include a water management plan, which
114 may be submitted on an individual well basis or on a
115 watershed basis, and which shall include the following
116 information:

117 (1) The type of water source, such as surface or
118 groundwater, the county of each source to be used by the

119 operation for water withdrawals and the latitude and
120 longitude of each anticipated withdrawal location;

121 (2) The anticipated volume of each water withdrawal;

122 (3) The anticipated months when water withdrawals will
123 be made;

124 (4) The planned management and disposition of
125 wastewater after completion from fracturing, refracturing,
126 stimulation and production activities;

127 (5) A listing of the anticipated additives that may be used
128 in water utilized for fracturing or stimulating the well. Upon
129 well completion, a listing of the additives that were actually
130 used in the fracturing or stimulating of the well shall be
131 submitted as part of the completion log or report required by
132 subdivision (14), subsection (a), section five of this article;

133 (6) For all surface water withdrawals, a water
134 management plan that includes the information requested in
135 subdivisions (1) through (5) of this subsection and the
136 following:

137 (A) Identification of the current designated and existing
138 water uses, including any public water intakes within one mile
139 downstream of the withdrawal location;

140 (B) For surface waters, a demonstration, using methods
141 acceptable to the secretary, that sufficient in-stream flow will be
142 available immediately downstream of the point of withdrawal.
143 A sufficient in-stream flow is maintained when a pass-by flow
144 that is protective of the identified use of the stream is preserved
145 immediately downstream of the point of withdrawal; and

146 (C) Methods to be used for surface water withdrawal to
147 minimize adverse impact to aquatic life; and

148 (7) This subsection is intended to be consistent with and
149 does not supersede, revise, repeal or otherwise modify articles
150 eleven, twelve or twenty-six of this chapter and does not revise,
151 repeal or otherwise modify the common law doctrine of riparian
152 rights in West Virginia law.

153 (f) An application may propose and a permit may approve
154 two or more activities defined as well work; however, a

155 separate permit shall be obtained for each horizontal well
156 drilled.

157 (g) The application for a permit under this section shall
158 be accompanied by the applicable bond as required by
159 section fifteen of this article, the applicable plat required by
160 subdivision (6), subsection (a), section five of this article and
161 a permit fee of \$10,000 for the initial horizontal well drilled
162 at a location and a permit fee of \$5,000 for each additional
163 horizontal well drilled on a single well pad at the same
164 location.

165 (h) The well operator named in the application shall
166 designate the name and address of an agent for the operator
167 who is the attorney-in-fact for the operator and who is a
168 resident of the State of West Virginia upon whom notices,
169 orders or other communications issued pursuant to this article
170 or article eleven of this chapter may be served, and upon
171 whom process may be served. Every well operator required
172 to designate an agent under this section shall, within five

173 days after the termination of the designation, notify the
174 secretary of the termination and designate a new agent.

175 (i) The well owner or operator shall install the permit
176 number as issued by the secretary and a contact telephone
177 number for the operator in a legible and permanent manner
178 to the well upon completion of any permitted work. The
179 dimensions, specifications and manner of installation shall be
180 in accordance with the rules of the secretary.

181 (j) The secretary may waive the requirements of this
182 section and sections eight, ten, eleven and twenty-four of this
183 article in any emergency situation if the secretary ~~deems~~
184 considers the action necessary. In ~~such~~ that case the
185 secretary may issue an emergency permit which is effective
186 for not more than thirty days, unless reissued by the
187 secretary.

188 (k) The secretary shall deny the issuance of a permit if
189 the secretary determines that the applicant has committed a
190 substantial violation of a previously issued permit for a

191 horizontal well, including the applicable erosion and
192 sediment control plan associated with the previously issued
193 permit, or a substantial violation of one or more of the rules
194 promulgated under this article, and in each instance has failed
195 to abate or seek review of the violation within the time
196 prescribed by the secretary pursuant to the provisions of
197 subdivisions (1) and (2), subsection (a), section five of this
198 article and the rules promulgated hereunder, which time may
199 not be unreasonable.

200 (1) ~~In the event~~ If the secretary finds that a substantial
201 violation has occurred and that the operator has failed to
202 abate or seek review of the violation in the time prescribed,
203 the secretary may suspend the permit on which ~~said~~ the
204 violation exists, after which suspension the operator shall
205 forthwith cease all well work being conducted under the
206 permit. However, the secretary may reinstate the permit
207 without further notice, at which time the well work may be
208 continued. The secretary shall make written findings of ~~any~~

209 ~~such~~ the suspension and may enforce the same in the circuit
210 courts of this state. The operator may appeal a suspension
211 pursuant to the provisions of subdivision (23), subsection (a),
212 section five of this article. The secretary shall make a written
213 finding of any such determination.

214 (m) Any well work permit issued in accordance with this
215 section may be transferred with the prior written approval of
216 the secretary upon his or her finding that the proposed
217 transferee meets all requirements for holding a well work
218 permit, notwithstanding any other provision of this article or
219 rule adopted pursuant to this article. Application for the
220 transfer of any well work permit shall be upon forms
221 prescribed by the secretary and submitted with a permit
222 transfer fee of \$500.00. Within ninety days of the receipt of
223 approval by the secretary, the transferee shall give notice of
224 the transfer to those persons entitled to notice in subsection
225 (b), section ten of this article by personal service or by
226 registered mail or by any method of delivery that requires a

227 receipt or signature confirmation, and shall further update the
228 emergency point of contact provided pursuant to subdivision
229 (13), subsection (b) of this section.